

1 GREGORY L. WILDE, ESQ.
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6 Telephone (702) 258-8200

7 Attorneys for Secured Creditor Wells Fargo Bank, N.A.
8 10-71631

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**
12

13 In Re:

14 Sonia G. Lopez

15 Debtor.

Bk Case No.: 10-13672-lbr

Date: November 9, 2010
Time: 10:30 am

Chapter 7

16 **DECLARATION IN RESPONSE TO ORDER TO SHOW CAUSE**

17 I, GREGORY L. WILDE, ESQ., hereby declare under penalties of perjury of the United States
18 of America that;

19 I am counsel of record for Wells Fargo Bank, N.A., in regards to this matter and responsible for
20 the Motion for Relief From Automatic Stay which is the subject of this proceeding.

21 On September 29, 2010, a hearing was held before the Court on the Secured Creditor's Motion
22 for Relief wherein the Court recognized that the Debtor had been discharged so the request was moot.
23 However, the Court ruled that Secured Creditor, to the extent that it had initiated a foreclosure
24 proceeding, must file a "new" Notice of Default.

25 Upon the oral allegations made in open Court by Stephanie Harmrick, Esq., the Court further
26 ordered Secured Creditor to provide a Declaration and payment history to the Debtor and counsel,
setting the matter for November 9, 2010.

1 The oral allegations included, but were not limited to, that the Secured Creditor had entered into
2 a forbearance agreement with the Debtor, and that later it, or its counsel, had prepared false pleadings
3 in an effort to harass or otherwise annoy the Debtor. There were no documents or testimony to
4 substantiate these allegations.

5 In fact, the Debtor had filed an opposition to the motion on August 25, 2010 and did not make or
6 mention the allegations made by her temporary counsel. However, she did claim that she had made all
7 the "pre-petition" and "post-petition" payments due under the note, which was not the case.

8 That undersigned counsel promptly contacted the Secured Creditor to obtain a payment history
9 and explanation pursuant to the Court's direction and by October 18, 2010, had received a payment
10 history, an explanation, and a had a draft declaration for the client's signature.

11 Attached as exhibit "1" is a copy of the subject declaration with the forbearance agreement as
12 exhibit "A" and payment history as exhibit "B". For convenience purposes, undersigned counsel has
13 attached hereto as exhibit "2" an enlarged copy of the payment history.

14 In full candor to the Court and Debtor, undersigned counsel "dropped the ball" at this point and
15 did not follow up any further with the client after October 18, 2010. Perhaps since the case was closed
16 after the hearing but this is no excuse. Any sanctions awarded will be the full responsibility of
17 undersigned counsel.

18 Before the Court considers issuing sanctions, it should briefly review the attached history and
19 forbearance agreement. It is clear that Ms. Hamrick had not seen the forbearance agreement, or
20 perhaps any documents, and that the Debtor was not fully candid with the Court and sat back while her
21 advocate made the misguided allegations against the Secured Creditor.

22 There was a temporary agreement made between the parties but it included a balloon payment of
23 \$4,461.70 on April 3, 2010, which the Debtor did not make. She only informed the Court of the
24 \$525.00 payments and that she had made the same. There is no dispute that she failed to make the
25 balloon payment, choosing instead to file bankruptcy on March 8, 2010.
26

1 The Secured Creditor properly held the three (3) payments of \$525 each in suspense and later
2 applied them pursuant to the terms of the note. Thereafter the Debtor did not perform causing the
3 subject motion to be filed on June 23, 2010, which accurately reflects that the Debtor was due for the
4 April 2010 payment. See exhibit "2".

5 The Court should note that, as detailed in the motion, a Notice of Default had not been initiated
6 and Secured Creditor has accepted payments thereafter.

7 There is no reason to issue sanctions in this case for the pleadings were not false and the
8 impromptu allegations made by Ms. Hamrick have been properly addressed demonstrating that they
9 were not correct.

10 Further Declarant sayeth naught.

11
12 BY: 

13 Gregory L. Wilde, Esq.

14
15
16 **Certificate of Facsimile**

17 I certify that I am an employee of Wilde & Associates and on November 8, 2010, I faxed a copy
18 of the foregoing document to:

19 Stephanie Hamrick, Esq. @

20 702 388 1641

21 
22 Employee of Wilde & Associates
23
24
25
26

Exhibit "1"

1 WILDE & ASSOCIATES
2 Gregory L. Wilde, Esq.
3 Nevada Bar No. 004417
4 208 South Jones Boulevard
5 Las Vegas, Nevada 89107
6 Telephone: 702 258-8200
7 Fax: 702 258-8787

8 Wells Fargo Bank, N.A.
9 10-71631

10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF NEVADA

12 In Re:

13 Sonia G. Lopez

14 Debtor

10-13672-lbr

Date:

Time:

Chapter 7

15 **DECLARATION IN SUPPORT OF THE MOTION**
16 **FOR RELIEF FROM AUTOMATIC STAY**

17 THE UNDERSIGNED DECLARES AND STATES:

18 1) I am over eighteen years of age and am employed by Wells Fargo Bank, N.A., Secured
19 Creditor in the instant action. I have personal knowledge of the foregoing, except as to those matters
20 stated under information and belief, and as to those matters I believe them to be true, and if called
21 upon as a witness I could and would competently testify thereto.

22 2) I am employed as the _____ with Secured Creditor and I
23 am familiar with Secured Creditor's treatment of loans involved in Bankruptcy proceedings. The
24 records in question are maintained under my control and supervision.

25 3) These documents include, but are not necessarily limited to, loan documents, including
26 promissory notes and deeds of trust and assignments kept in the ordinary course of business, entries

1 are made in the records of Wells Fargo Bank, N.A., at or about the time of any loan activity reflecting
2 that activity, and payment histories on the subject loan.

3 4) I have reviewed this account and have found that on December 3, 2009 a forbearance
4 agreement was offered to the debtors. This agreement was signed on March 1, 2010 by the Debtors. The
5 agreement arranged for the Debtor to make partial payments curing the account arrearages in full by a
6 due date of April 3, 2010. The Forbearance Agreement is attached as Exhibit "A". Payments in the
7 amount of \$525.00 were to be paid on January 3, 2010, February 3, 2010 and March 3, 2010 with a final
8 payment in the amount of \$4,461.70 due on or before April 3, 2010. The lower amounts that were
9 outlined were designed to allow the borrower time to determine how they can resolve or improve their
10 financial situation. This was simply a catch up plan to cure the default amounts and did not state that the
11 funds would be applied as regular monthly mortgage payments nor was it a promise of a loan
12 modification.
13

14 5) Pursuant to the attached history Exhibit "B" The payments remitted on this account
15 according the forbearance agreement are as follows:
16

17 January 4, 2010 payment in the amount of \$525.00

18 February 3, 2010 payment in the amount of \$525.00

19 March 3, 2010 payment in the amount of \$525.00

20 April 16, 2010 payment in the amount of \$525.00

21 As reflected in the forbearance agreement the final payment was due on April 3, 2010. Debtor's
22 final payment due, according to the plan was \$4,461.70. Their remittance of only \$525.00 voids
23 this plan and allows the delinquency to remain.
24
25
26

6) The initial review of the borrower's financials determined that Debtors had a deficiency in their income (see subsection A below). Updated Financials were received (see subsection B below) and Debtors were ultimately denied for a loan modification because they did not show the ability to repay the mortgage based on the updated financials provided by the Debtors.

a) At the time of the repayment plan the borrower provided the following financials:

1ST/2ND MORTGAGE	\$1,207.34
PYMTS: INSTALL/CARS	\$1,722.00
FOOD	\$200.00
UTILITIES	\$285.00
TRANSPORTATION	\$383.00
MEDICAL/INS EXP	\$200.00
CABLE,INTERNET,ENT	\$260.00
CLOTHING/OTHER MISC	\$400.00
INCOME:	\$3,075.00
EXPENSES:	\$4,657.34
SURPLUS/DEFICIT(-):	(-\$1,582.34)

b) As of 04/22/10 the debtor provided the following updated financials:

1ST/2ND MORTGAGE	\$1,207.34
FOOD	\$200.00
UTILITIES	\$285.00
TRANSPORTATION	\$383.00
MEDICAL/INS EXP	\$200.00
CABLE,INTERNET,ENT	\$216.99
CLOTHING/OTHER MISC	\$400.00
PYMTS:INSTALL/CARS	\$1,458.00
INCOME:	\$3,912.86
EXPENSES:	\$4,350.33
SURPLUS/DEFICIT (-):	(-\$437.47)

The current amounts due in order reinstate the loan good through 9/15/10 is as follows:

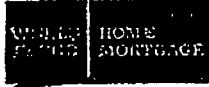
REINSTATE ON	09-15-10
NEXT DUE DATE WILL BE	10-01-10
PAYMENTS DUE	4
TOTAL PAYMENT AMOUNT	\$4,829.36
ACCRUED LATE CHARGES	\$144.87
SUSPENSE	(\$892.66)
CORPORATE ADVANCE	\$125.00
BANKRUPTCY FEES & COSTS	\$800.00
TOTAL DUE	\$6,791.89

1
2 I declare under penalty of perjury that the foregoing is true and correct.
3
4

5 BY: _____
6

7 SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on the September
8 11, 2010.
9

10 _____
11 Notary Public
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Return Mail Operations
P.O. Box 10368
Des Moines, IA 50306-0368

December 03, 2009

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Sonia G Lopez
Jessica G Flores
6525 Charlie Chaplin Ave 103
Las Vegas NV 89122-1766

|||||.....|||||.....|||||.....|||||.....|||||.....|||||.....

Client 708
Loan Number 0210205605
Due Date: 12-01-09

Thank you for contacting us regarding your temporary financial hardship on the above mentioned loan. We are concerned when our customers are experiencing a financial hardship which is beyond their control and are here to assist you through this difficult period.

1. As discussed we have granted you the payment arrangement listed below.

PLAN	DATE	AMT	PLAN	DATE	AMT
01	01/03/10	525.00	02	02/03/10	525.00
03	03/03/10	525.00	04	04/03/10	4,461.70

2. This is a period for you to determine how you can resolve or improve your financial situation. This plan is not a waiver of the accrued or future payments or late charges that become due.

3. During this period, we are requesting that you contact our office monthly or if changes occur to your financial situation, contact us immediately. If you are unable to make a payment on the plan by the date indicated above, further collection activity may result, including foreclosure.

4. On 04/03/10, all past due payments and accrued charges are due. If you are unable to make the final payment listed above, you must have established acceptable arrangements with our office for bringing your loan current.

5. Please sign and date the enclosed agreement and return to the following address or you may fax to (866) 359-7363. Payments during the plan should be sent to the following address:

Wells Fargo Home Mortgage
3476 Stateview Blvd., MAC X7801-03K
Fort Mill SC 29715

If we can be of further assistance, please call us at (800) 416-1472, Monday through Thursday, 8 AM to 11 PM; Friday, 8 AM to 9:30 PM; or Saturday, 9 AM to 1 PM, Eastern Time.

We are required by the Fair Debt Collection Practices Act to inform you if your loan is currently delinquent or in default, as your loan servicer, we will be attempting to collect a debt, and any information obtained will be used for that purpose. However, if you have received a discharge, and the loan was not reaffirmed in the bankruptcy case, we will only exercise our rights against the property and are not attempting any act to collect the discharge debt from you personally.



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[illegible]

Exhibit "2"

Date Received	Contractual Due Date	Post Due Date	Pre Due Date	Amount Received	Amount Applied to Principal	Amount Applied to Interest	Escrow Applied Disbursed	Escrow Advance	Late Charge Applied or Paid	Debtor Suspense	Trustee Suspense
10/22/08											
11/04/08							-566.01				
12/04/08							-566.02				
12/05/08							-5134.41				
12/08/08	12/01/08			\$1,207.33	\$161.60	\$607.79	\$237.74				
12/29/08							-60.01				
01/05/09							-566.02				
01/06/09	01/01/09			\$1,207.33	\$162.61	\$606.98	\$237.74				
02/04/09							-566.02				
02/10/09	02/01/09			\$1,207.33	\$163.43	\$608.16	\$237.74				
02/13/09							-5134.41				
03/04/09							-566.02				
03/09/09	03/01/09			\$1,207.33	\$164.24	\$605.35	\$237.74				
04/03/09							-566.02				
04/09/09	04/01/09			\$1,207.33	\$165.07	\$604.52	\$237.74				
05/04/09							-566.02				
05/11/09	05/01/09			\$1,207.33	\$165.89	\$603.70	\$237.74				
06/04/09							-566.02				
06/09/09	06/01/09			\$1,207.33	\$166.72	\$602.87	\$237.74				
07/03/09							-566.02				
07/13/09	07/01/09			\$1,207.33	\$167.55	\$602.04	\$237.74				
07/23/09							-5353.78				
08/04/09							-566.02				
08/17/09	08/01/09			\$1,207.33	\$168.39	\$601.20	\$237.74				
09/10/09							-566.02				
09/09/09							-5007.28				
09/14/09	09/01/09			\$1,207.33	\$169.23	\$600.36	\$237.74				
09/16/09							-5460.75				
09/28/09							-5353.78				
09/29/09							\$15.00	\$15.00			
10/02/09							-566.02				
							\$66.02	\$66.02			
10/09/09	10/01/09			\$1,207.33	\$170.08	\$799.51	\$237.74				
							-581.62	-581.62			
11/04/09							-585.16				
11/10/09	11/01/09			\$1,207.34	\$170.93	\$798.60	\$237.75				
12/04/09	12/01/09			\$1,207.34	\$171.78	\$797.81	\$237.75				
12/04/09							-565.18				
12/07/09							-5353.78				
01/04/10			✓	\$525.00						\$525.00	
01/05/10			✓	\$525.00			-565.18				\$525.00
02/04/10							-565.18				
02/24/10							-5353.78				
							\$336.66	\$336.66			
03/03/10			✓	\$525.00						\$525.00	
03/04/10	01/01/10				\$172.64	\$796.95	\$237.75			-51,207.34	
							-5237.75	-5237.75			
03/04/10							-565.18				
03/16/10							\$65.18	\$65.18			
									\$48.29		
04/02/10							-565.18				
							\$65.18	\$65.18			
04/16/10			✓	\$525.00						\$525.00	
04/16/10									\$48.29		
05/04/10							-565.18				
							\$65.18	\$65.18			
05/12/10	02/01/10			\$1,207.34	\$173.51	\$796.08	\$237.75				
							-5237.75	-5237.75			
05/17/10									\$48.29		
06/04/10							-565.18				
							\$65.18	\$65.18			
06/07/10	03/01/10			\$1,207.34	\$174.37	\$795.22	\$237.75				
							-5121.88	-5121.88			
06/16/10									\$48.29		
07/02/10							-565.18				
07/05/10	04/01/10			\$1,207.34	\$175.25	\$794.34	\$237.75				
07/16/10									\$48.29		
07/26/10							-5266.82				
08/04/10							-565.18				
							\$43.36	\$43.36			
08/16/10	05/01/10			\$1,207.34	\$176.12	\$793.47	\$237.75				
							-543.36	-543.36			
08/25/10									-565.58		
09/03/10							-565.18				

FILED BK

EXHIBIT "2"